IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.1435 of 2006
Date of Decision : September 22, 2006.

Harpreet Singh ..... Petitioner

Vs.

Smt.Sudershan Berry ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.M.L.Sarin, Senior Advocate
with Mr.Hemant Sarin, Advocate
for the petitioner.

Mr.B.R.Mahajan, Advocate
for the respondent.

* * *

P.S.Patwalia, J. :

The present revision petition has been filed by the tenant against the order of the appellate authority evicting him from the demised premises on the ground of bona fide personal necessity of the landlady. The petition filed by the landlady was dismissed by the Rent Controller.

However the appellate authority reversed the findings on bona fide personal necessity of the landlady in appeal.

The landlady had filed a petition under Section 13 of the East Punjab Urban Rent Restriction Act, 1949 seeking the eviction of the tenant from the Ground Floor of property bearing No.11, situated at Lawrence Road, Amritsar. The petition was filed on account of non payment of rent, diminishing the value and utility of the demised premises as also on bona fide personal necessity. On the ground of bona fide personal necessity it was the case of the landlady that she required the premises for her own use and occupation. She is living in the upper portion of the building. She has to travel 15 steps to reach the First Floor. She was suffering from heart disease and high blood pressure. She was examined by a doctor in the year 1985 who did an E.C.G. of her heart and stated as AW-1 that as per the report of E.C.G. she had some heart problem. It is the landlady's case that she use to get breathless while climbing the stairs and had to take rest by sitting on the stairs for some time. The landlady is approximately 70 years old today when this revision petition has come up for hearing before me. It is therefore her case that at this stage of her life she requires the premises for her own use and occupation.

The pleadings on the ground of personal necessity as set out in para 2(c) of the petition filed by the landlady read as under :-

> ***"2(c)*** *The petitioner bonafide needs the premises for her own use and occupation. The petitioner is suffering from heart trouble recently and is advised by the medical experts not to climb*

> *any stair case. The petitioner along with her son is presently living at the upper portion of the building and finds great difficulty in climbing the stair case and on this account her health is falling day by day. The petitioner needs the premises on the ground floor for her own use and occupation.***"**

During the pendency of the proceedings before the learned Rent Controller the landlady appeared as her own witness and substantiated these averments. This stand was further supported by AW-4 Shri Surinder Kumar Berry, nephew of the landlady as also AW-1 Dr.Surinder Singh Madan, a private practitioner who had conducted the E.C.G. of the landlady in the year 1985. He stated that as per the report she had some heart problem. However he could not tell the latest position as the E.C.G. was done in the year 1985. However he further stated that at that time she had a heart problem. The report of the E.C.G. was also placed on the record as Ex.A-2 and the receipt as Ex.A-3. On the basis of the aforementioned pleadings and evidence the appellate authority recorded the following findings on the ground of personal necessity :-

> ***"18.*** *It was stated by the applicant, AW-3 that "she is living in the upper portion of the building and is to climb 15 stairs to reach the same. She is suffering from heart disease and high blood pressure for which she has already consulted the doctors and ECG of her heart was also done from time to time. While climbing the*

stairs, it is difficult for her to contain her breath and she has to put extra exertion on her heart. She climbs the stairs by taking some rest and by sitting on the same. She requires the demised premises bona fide for her own use and occupation. Her health is falling day by day." This evidence of the applicant that she is a heart patient and is suffering from high blood pressure and on that grounds finds it difficult to climb the staircase did not find favour with the learned Rent Controller on the ground that she has not brought on record any corroborative evidence to prove that she is suffering from such kind of ailment and that she was required to lead cogent and convincing evidence that she was actually suffering from such a problem. The statement of the applicant could not have been brushed aside simply on that ground. In fact, there is corroborative evidence also on record, which the learned Rent Controller has totally ignored. The applicant examined Dr. Surinder Singh Madan, AW-1. He stated that "the applicant got her ECG examined from his clinic." He proved on record his own report as Ex.A1, ECG Report Ex.A2 and the receipt as Ex.A3. His statement was not

challenged during his cross-examination and he was only asked if the problem from which the applicant was suffering was temporary or not. He stated that she was suffering from temporary problem, which can decrease or increase. It is very much clear from his report Ex.A1 that ECG of the applicant was normal. The applicant, AW-3 has also deposed to the effect that she has got herself examined from the respondent itself. The prescription slip was proved by her as AW-3/2. She was not cross-examined on that aspect of the case nor the respondent rebutted that portion of her statement. The prescription slip so proved by the applicant was objected to on the mode of proof but when the same was put to the respondent, RW-4, during his cross-examination, he admitted that at the time of the writing of that prescription slip on 14.2.1985, he had examined the applicant and had found her blood pressure to be 180/100. He stated that she was not having heart trouble but had got the problem of high blood pressure. That itself creates confidence in the statement, made by the applicant that she is suffering from heart trouble and from high blood pressure. It firmly stands proved from the evidence, produced by her

that she is having heart problem and is suffering from high blood pressure."

On the basis of the aforementioned findings the appellate authority held that the landlady had successfully proved that she required the residential premises bona fide for her own use and occupation and after reversing the findings of the Rent Controller held that the landlady was entitled to the ejectment of the tenant from the demised premises on the ground of personal necessity.

Mr.Sarin, learned senior counsel appearing for the petitioner-tenant in the present case raised the following points for consideration to assail the aforementioned findings recorded by the appellate authority :-

(i) The findings are liable to be reversed on the ground that the landlady had led no evidence to corroborate the plea of personal necessity on the ground of illness.

(ii) The learned counsel argued that in the present case the requirement of need of the landlady was missing. She was already occupying the First Floor of the same premises. Thus the plea of bona fide personal necessity was merely a pretext to evict the tenant.

(iii) He further stated that the observations in the order of the appellate authority that the landlady had high blood pressure were beyond the pleadings. It is his case that in the absence of pleadings on the point no evidence could have been led to support the aforementioned plea. In fact according to the learned counsel there was no evidence in the present case to

support the said plea.

(iv) He further argued that to successfully make out a case of bona fide personal necessity the landlord is required to plead and prove that he requires the building for his own occupation, he is not occupying any other residential building in the urban area concerned and he has not vacated such a building on sufficient cause after the commencement of the Act in the said urban area. According to him the three aforementioned ingredients had to be pleaded and proved which has not been done in the present case. It is his contention that this very building was vacated in the year 1984 and again let out to the present tenant for use as a clinic after the commencement of the Act and hence the plea of bona fide personal necessity was not made out.

(v) Lastly he argued that the appellate authority has not dealt with the issues framed by the Rent Controller individually and independently. Thus the order of the appellate authority deserves to be set aside on this ground alone.

The first four issues relate to the plea set up by the landlady on the ground of personal necessity. The landlady is about 70 years of age today. She is currently occupying the First Floor of the house. In her own evidence she has stated that she is suffering from heart problem and high blood pressure. She has stated that she has been consulting the doctors in this regard from time to time. Even E.C.G. had been done. The doctor who has appeared has also supported this averment. He has stated that at the

time when E.C.G. was done she had some heart problem. The landlady has further stated she use to get breathless while climbing the stairs and sometimes has to take rest in the midst of climbing the entire flight of stairs. I am of the opinion that at this stage when the landlady is over 70 years of age it will not be fair to deny her the comfort of living in her own house in accordance with her desire and convenience. It is well settled that a landlord is the best judge of his needs and interests. The tenant does not have much to say in this decision of the landlord. It also cannot be lost sight of the fact that since in the year 1985 the landlady was having a heart problem she would at this stage certainly experience difficulty in climbing stairs. Her evidence that she is suffering from high blood pressure as also heart problem cannot be disbelieved. The circumstances of her illness coupled with the fact that she is in an advance stage leads me to the conclusion that the necessity of the landlady is genuine and the findings recorded by the lower appellate court needs no interference. In the view that I am taking I am supported by a view taken by learned Single Judge of this Court in *Raj Kumar Gambir vs. Kanwar Sain Jain* reported as *2003 (1) RCR 558* which is as hereunder :-

> ***"4.*** *Having heard the learned counsel at considerable length and perusing the judgments of both the Courts below, I am of the considered opinion that the findings of facts on the question of personal necessity of the landlord-respondent cannot be interfered with. It has been categorically held by both the courts that the*

*landlord-respondent had met with an accident and got his leg fractured which must be causing extreme inconvenience to him to climb staircase for going up and down on the first floor. It has also been concurrently found by both the Courts below that the wife of the landlord-respondent is suffering from heart problem and she is under the continuous treatment of a cardiologist namely Dr.A.K.Jain who had appeared as PW.1. Both landlord-respondent as well as his wife are about 70 years of age. In the evenings of their lives it will not be fair to deny them comfort of living in their own house in accordance with their desire and convenience. It is well settled that the landlord is the best judge of his needs and interest. The tenant does not have much say in that decision of the landlord. In the present case, the circumstances showing illness of both of the landlord-respondent and his wife coupled with the fact that they are in the advance age, would further lead to the conclusion that the necessity of the landlord-respondent is genuine and cannot brook any further delay.***"***

Similar view was also taken by another Single Judge of this Court in *Bhupinder Singh vs. Harbhajan Kaur* reported as *2001 (1)*

RCR 120. While dealing with a finding of personal necessity recorded by the Rent Controller and appellate authority and confirming the same, the learned Judge observed as hereunder :-

> ***"10.*** *In support of the first point, learned counsel for the petitioner submitted that in the petition for ejectment, it had only been averred that the landlady was suffering from illness, joint pains and other diseases and there was nothing mentioned about the heart disease or the spinal problem whereas in the medical evidence now produced it had been brought on record that the landlady was suffering from heart, spinal problem etc. It was further argued that the doctor had advised the landlady to avoid climbing the stair and this did not mean that the landlady was prohibited from climbing the stairs or that she could not climb the stairs.*
>
> ***11.*** *In her evidence, landlady had stated that she has been suffering from spinal problem and had got operated for the spinal problem in USA in September 1996, where her brother is living. Prior to that she was under treatment at Rajindra Hospital, Patiala. She has also mentioned that she is suffering from heart problem and suffered a heart attack in October 1987 and*

remained admitted in Rajindra Hospital and underwent angioplasty for heart ailment in U.S.A. She had also brought all the documents regarding treatment taken by her in Rajindra Hospital, at Delhi as well as in U.S.A. The court asked the counsel for the tenant if he wanted to get information about the name of the hospital from where she had got operated upon, which the landlady could give from record she had brought but the counsel stated that he did not want any such information.

12. *The landlady had also produced the doctors from whom she was getting treatment who have supported the case of the landlady regarding the illness on the basis of documents which were duly exhibited. I do not find any substance in the argument of the learned counsel for the petitioner. The landlady had stated in her petition that she was suffering from illness, joint pains and other diseases and had got operated in U.S.A. It is not necessary to give as to from which particular illness the person is suffering especially when written proof regarding illness is produced in the Court. The landlady had retired from service in 1991 at the age of 58 years and when the petition*

> *was filed in the year 1996, she was about 63 years of age. A lady of 63 years of age can have joint pains, spinal problems and experience pain and discomfort in climbing the stairs. This has been so stated by the doctors who attended upon her. So it cannot be said that the medical evidence could not be looked into regarding her disease or other problems as it has not been specifically stated in the petition.*"

There is another important aspect of the matter. During the course of hearing I had put it to the learned counsel for the respondent as to whether she was willing to state that she would not either sell or let out this property during her lifetime and would rather only use it for her own enjoyment. Learned counsel on instructions had stated that the landlady was willing to file an affidavit that she would not alienate the property in dispute or let out the same to any person during her lifetime. In fact by C.M. No.16475-C of 2006 the said affidavit has been filed which has already been taken on record. The very fact that the landlady has filed an affidavit that during her lifetime she would neither alienate nor let out the premises to any other person also shows that at this stage of her life she desires her own house for her own living. It has also come on the record that the landlady has one son and two daughters. Thus she requires the premises for the enjoyment of the same by her and her family members.

Adverting now to the contentions raised by the learned counsel for the petitioner, it has firstly been argued that no evidence was led by the

landlady the corroborate the plea of personal necessity on the ground of illness. The second point raised also flows from the first. It is argued that the requirement of a genuine need is missing. Taking up these two contentions together I am of the opinion that there is no merit in the same. As has already reproduced herein above, the landlady has submitted sufficient evidence by way of her own statement corroborated by the statement of her nephew and the doctor who conducted the E.C.G. The E.C.G. itself and receipt is on the record. I therefore find that there is sufficient evidence in the present case on the basis of which the plea of personal necessity on the ground of illness has been accepted. In view of the fact that the landlady is 70 years old and is old and at this stage of her life requires the premises for her own use and occupation I am also of the opinion that she has succeeded in proving that her requirement is an outcome of a sincere honest desire rather than being a mere pretense or pretext to evict the tenant.

In support of the aforesaid two contentions learned counsel for the petitioner firstly relied upon a judgment of this Court in *Bal Kishan vs. Sat Parkash Sood* reported as *1993 (2) RLR 717*. A reading of the said judgment would show that in that case the landlord was a resident of Bombay. The demises premises was situated at Anaz Mandi, Sirhind. A reading of the facts would show that a part of the building on the Ground Floor and two rooms on the First Floor were in possession of the nephew of the landlord and his son. The landlord had filed a petition for eviction on bona fide personal necessity on the ground that he had suffered a heart attack and therefore needed the entire premises. During the pendency of the

proceedings in the first instance, the landlord had agreed that he was prepared to give up the First Floor if he was given the Ground Floor and the tenant had accepted this offer. However on the next date of hearing the landlord stated that the compromise was not acceptable to him. Thus the Court concluded that this gave rise to an inference that the landlord was more concerned with getting the tenant evicted rather than living on the Ground Floor. The relevant observations of the Court are as hereunder :-

> *"**7.** As regards the other aspect of the matter, namely, that the landlord required the premises on the ground floor as he was not permitted to climb stairs, it deserves note that during the hearing of the petition it was stated by the counsel for the respondent-landlord that in lieu of the demised premises the landlord was prepared to give to the tenant the first floor. The tenant accepted this offer and the matter was then adjourned to enable the parties to finalise this settlement between them, namely, that the tenant would shift to the first floor while the landlord would get the accommodation on the ground floor. On the next date of hearing, however, when the landlord was present in person along with his counsel, he stated that this compromise was not acceptable to him. The petition was consequently directed to be taken up for hearing on merits. This*

> *cannot but given rise to the inference that the landlord is more concerned with getting the tenant evicted from the demised premises rather than living on the ground floor. It is significant to note here that the landlord came forth with no reason to explain his refusal to exchange accommodation of the first floor with that of the tenants on the ground floor."*

The situation in the present case is totally different. The observations made in this judgment would therefore have no application to the facts of this case. The learned counsel has also relied upon a number of judgments which dilate on the correct exposition of bona fide requirement as against the pretext to evict the tenant from the premises. I need not refer to all those judgments individually. To illustrate learned counsel has referred to *Shiv Sarup Gupta vs. Dr. Mahesh Chand Gupta* reported as *1999 (2) RCR 141*, para 12 of which reads as under :-

> ***"12.*** *Chambers 20th Century Dictionary defines* ***bona fide*** *to mean `in good faith : genuine'. The word `genuine' means `natural : not spurious : real : pure : sincere'. In Law Dictionary, Mozley and Whitley define* ***bona fide*** *to mean `good faith, without fraud or deceit'. Thus the term* ***bona fide*** *or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by `requires' is*

> *much more higher than in mere desire. The phrase `required bona fide' is suggestive of legislative intent that a mere desire which is outcome of whim or fancy is not taken note of by the Rent Control Legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contra-distinction with a mere pretense or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of landlord and its* ***bona fides*** *would be capable of successfully withstanding the test of objective determination by the Court. The Judge of facts should place himself in the arm chair of the landlord and then ask the question to himself – whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is* ***bona fide."***

Having examined those judgments I am of the opinion that in the present case the landlady has successfully established her bona fide need and I am satisfied that she genuinely requires the premises for her own

use and occupation.

Learned counsel thereafter argued that in the petition there was no pleading that the landlady was suffering from blood pressure. Hence she could not lead evidence on this issue. From a perusal of the pleadings I find that the landlady has stated that she is suffering from heart trouble and has been advised by the medical experts not to climb any staircase. She has further stated that she finds great difficulty in climbing the staircase and her health is falling day by day. To substantiate this plea in her evidence she has stated that she is suffering from blood pressure. I do not find it a case where the evidence is beyond pleadings. The judgment in *Siddik Mahomed Shah vs. Mt.Saran and others* reported as *A.I.R. 1930 Privy Council 57(1)* relied upon by the learned counsel for the petitioner would have no application to the present case.

Learned counsel then argues that the landlady in the present case has not successfully pleaded and proved all the ingredients of bona fide personal necessity. He has referred to a Full Bench judgment of this Court in *Shri Banke Ram vs. Smt. Sarasti Devi* reported as *1977 PLR 112*. In the present case I am satisfied that the landlady has pleaded that she requires the residential building for her own occupation. She has further pleaded that she does not own and possess any other building within the limits of Municipal Corporation, Amritsar. Other than the fact that she is living on the First Floor of this building she has further pleaded that she has not vacated any other property in Amritsar after the commencement of 1949 Act. Learned counsel however argued that since this very Ground Floor had been evicted in 1984 and rented out to the petitioner-tenant, the requirement

of Section 13(3)(c) is not fulfilled. I find no merit in this contention. Merely because the building was let out for a clinic after the commencement of the Act would not preclude the landlady to seek eviction of the tenant from the same on the Ground Floor on the ground of personal necessity.

Lastly learned counsel submits that the order of the appellate authority has not dealt with the findings recorded by the Rent Controller issuewise. He therefore submits that the order of the appellate authority should be set aside on this ground alone. A perusal of the order of the appellate authority shows that the landlady in appeal had only assailed the findings of the Rent Controller on issues no.2 and 5-B. This is clear from the following observations in the order of the appellate authority :-

> *"Learned counsel for the applicant assailed the findings of the learned Rent Controller on issue Nos.2 and 5B."*

The Rent Controller starts considering the findings on issues no.2 and 5-B. Issue no.2 is the issue regarding bona fide personal necessity and issue no.5-B is as to whether the demised premises a scheduled building has been let out for the purpose of a doctor's clinic and if so, its effect. Firstly the appellate authority concludes in para 17 that even if the building was let out for a doctor's clinic the landlady was entitled to ejectment on the ground of personal necessity. Thereafter the ground of personal necessity has been examined on merits. It is only after reversing the findings on the issue of personal necessity that the appellate authority has ordered eviction of the tenant. Since the appellate authority had only considered and reversed the findings on the ground of personal necessity I find no merit in

this contention raised by the learned counsel for the petitioner.

Before concluding it may be mentioned that after the judgment was reserved on 18.8.2006, the landlady had sought time to file an affidavit that she would neither sell or let out the building in question to anybody during her lifetime. As already stated herein above the said affidavit has been filed. However during the intervening period an application was filed by the tenant as well stating that he is ready to exchange the Ground Floor of the tenanted premises with the First Floor with the landlady. Notice of the said application was given. However the counsel for the landlady stated that she does not wish to exchange the property. I am of the opinion that the landlady at this old age is entitled to enjoy her property in the manner which she pleases. She cannot be forced to exchange the property in her possession with the tenant. This is all the more so since the landlady has already filed an affidavit saying that she has no intention to give the property on rent to anybody or even to sell the same during her lifetime. I find nothing wrong in the approach of the landlady. Hence the offer raised in C.M.No.16474-C-II of 2006 at this stage after the arguments were concluded, having not been accepted by the landlady, is also rejected. The application is therefore dismissed.

For the reasons aforementioned I find no merit in this revision petition and the same is accordingly dismissed.

September 22, 2006 (P.S.Patwalia)
monika Judge